

2007 No. 1087

EDUCATION, ENGLAND

**The Education (Independent School Standards) (England)
(Amendment) Regulations 2007**

<i>Made</i> - - - -	<i>28th March 2007</i>
<i>Laid before Parliament</i>	<i>10th April 2007</i>
<i>Coming into force</i> - -	<i>1st May 2007</i>

In exercise of the powers conferred on the Secretary of State by sections 157(1) and 210(7) of the Education Act 2002(a), the Secretary of State for Education and Skills makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Education (Independent School Standards) (England) (Amendment) Regulations 2007 and come into force on 1st May 2007.

(2) These Regulations apply only in relation to England.

(3) In these Regulations, “the principal Regulations” means the Education (Independent School Standards) (England) Regulations 2003(b).

Amendments

2. The principal Regulations are amended in accordance with regulations 3, 4, 5 and subject to regulation 6.

3. In regulation 3 omit paragraph (c).

4.—(1) Regulation 4 (interpretation) is renumbered as paragraph (1) of that regulation.

(2) In regulation 4(1) as so renumbered—

(a) for the definition of “staff” substitute the following definition—

““staff” means any person working at the school whether under a contract of employment, under a contract for services or otherwise than under a contract and includes a person working as a volunteer but does not include “supply staff”;;”;

(b) insert the following definitions in the appropriate place in alphabetical order—

““children’s suitability statement” has the meaning given by section 113C of the Police Act 1997(c);”;

(a) 2002 c.32; section 157 has been prospectively amended by section 47 of the Childcare Act 2006 (c. 21).

(b) S.I. 2003/1910, as amended by S.I. 2004/3374.

(c) 1997 c.50; section 113C was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15), amended by article 6(1) of S.I. 2005/3496 and prospectively repealed by section 63(2) of and Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47).

““employment business” has the meaning given in section 13(3) of the Employment Agencies Act 1973(a) and includes a local authority and a person carrying on an employment business;

“enhanced criminal record certificate” has the meaning given by section 113B of the Police Act 1997;”;

““supply staff” means any person working at the school supplied by an employment business.”.

(3) After regulation 4(1) as so renumbered insert—

“(2) For the purposes of these Regulations an “enhanced criminal record check” is made if—

- (a) an application for an enhanced criminal record certificate is made under Part V of the Police Act 1997 and the application for the certificate is accompanied by a children’s suitability statement; and
- (b) the application is countersigned by a registered person (within the meaning of section 120 of the Police Act 1997(b)) or an application is countersigned on his behalf, and (in either case) the application is submitted in accordance with Part V of that Act.

(3) In these Regulations, the “National Minimum Standards for Boarding Schools” and the “National Minimum Standards for Residential Special Schools” mean the standards published respectively under those titles in March 2002 by the Secretary of State for Health under section 23(1) of the Care Standards Act 2000(c).”

5. Subject to regulation 6, for paragraph 4 (suitability of proprietors and staff) of the Schedule substitute the following—

“Suitability of staff, supply staff and proprietors

4.—(1) This paragraph applies to the appointment of a member of staff at an independent school, other than a proprietor and supply staff.

(2) The suitability of a member of staff appointed to a position at the school meets the standard if —

- (a) the proprietor carries out appropriate checks to confirm in respect of each such person—
 - (i) his identity;
 - (ii) his medical fitness;
 - (iii) his right to work in the United Kingdom;
 - (iv) his previous employment history;
 - (v) his character references;
 - (vi) where appropriate, his professional references; and
 - (vii) where appropriate, his qualifications;
- (b) an enhanced criminal record check is made by the proprietor in respect of any such person and the enhanced criminal record certificate which is the subject of the application is obtained before or as soon as practicable after his appointment;
- (c) in the case of any person for whom, by reason of his living or having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish his suitability to work in a school, such further checks are made as the proprietor

(a) 1973 c.35; section 13 was last amended by sections 59 and 174(2) of, and paragraph 19 of Schedule 4 and Part 2 of Schedule 17 to, 2005 c. 15.

(b) Section 120 was last amended by sections 163(3) and 178(4) of, and paragraphs 1 and 6 of Schedule 14 to, 2005 c. 15.

(c) 2000 c. 14; there are amendments to section 23 not relevant to these Regulations.

considers appropriate, having regard to any guidance issued by the Secretary of State;

- (d) no such person carries out work, or intends to carry out work, at the school in contravention of any direction made under section 142 of the 2002 Act^(a) or any disqualification, prohibition or restriction which takes effect as if contained in such a direction; and
- (e) in the case of staff who care for, train, supervise or are in charge of children for whom accommodation is provided, in addition to the requirements of paragraphs (a) to (d), a check is made by the proprietor that Standard 38 of the National Minimum Standards for Boarding Schools or, where applicable, Standard 27 of the National Minimum Standards for Residential Special Schools is complied with.

(3) The checks referred to in sub-paragraphs (2)(a) and, subject to sub-paragraph (4), (2)(c) shall be completed before a person's appointment.

(4) The checks specified in sub-paragraphs (2)(b), (2)(c) and (2)(e) do not need to be carried out where the new member of staff has worked in—

- (a) a school in England in a position which brought him regularly into contact with children or young persons;
- (b) a maintained school in England in a position to which he was appointed on or after 12th May 2006 and which did not bring him regularly into contact with children or young persons; or
- (c) an institution within the further education sector in England in a position which involved the provision of education or which brought him regularly into contact with children or young persons;

during a period which ended not more than three months before his appointment.

4A.—(1) This paragraph applies to the appointment of supply staff at an independent school.

(2) The suitability of supply staff at the school meets the standard if the following requirements are satisfied.

(3) No person supplied by an employment business to the school may begin work at the school unless the proprietor has received—

- (a) written notification from the employment business in relation to that person—
 - (i) that the checks referred to in paragraph 4C(4)(a)(i) have been made;
 - (ii) that an enhanced criminal record check has been made, or an enhanced criminal record certificate has been obtained in response to an enhanced criminal record check by that or another employment business;
 - (iii) whether, if the employment business has obtained such a certificate before the person is due to begin work at the school, it disclosed any matter or information, or any information was supplied to the employment business, in accordance with section 113B(6) of the Police Act 1997^(b); and
- (b) where the employment business has obtained an enhanced criminal record certificate before the person is due to begin work at the school, and it discloses any matter or information, or any information was provided to the employment business in accordance with section 113B(6) of the Police Act 1997, a copy of the certificate.

(4) Except in the case of a person to whom sub-paragraph (5) applies the certificate referred to in sub-paragraph (3)(a)(ii) shall have been obtained not more than three months before the date on which the person is due to begin work at the school.

(a) Section 142 has been prospectively repealed by section 63(2) of, and Schedule 10 to, 2006 c. 47.

(b) Section 113B was inserted by section 163(2) of 2005 c. 15 and amended by section 63(1) of, and paragraph 14 of Part 2 of Schedule 9 to, 2006 c. 47.

- (5) This sub-paragraph applies to a person who has worked in—
- (a) a school in England in a position which brought him regularly into contact with children or young persons;
 - (b) a maintained school in England in a position to which he was appointed on or after 12th May 2006 and which did not bring him regularly into contact with children or young persons; or
 - (c) an institution within the further education sector in England in a position which involved the provision of education or which brought him regularly into contact with children or young persons;

during a period which ended not more than three months before the date on which he is due to begin work at the independent school.

(6) Before a person offered for supply by an employment business may begin work at the school his identity shall be checked by the proprietor of the school (irrespective of any such check carried out by the employment business before the person was offered for supply).

(7) The proprietor shall in the contract or other arrangements which they make with any employment business require it, in respect of any person whom the employment business supplies to the school—

- (a) to provide the notification referred to in sub-paragraph (3); and
- (b) if any enhanced criminal record certificate which the employment business obtains contains any matter or information, or if any information was supplied to the employment business in accordance with section 113B(6) of the Police Act 1997, to provide a copy of the certificate.

(8) Except for those persons to whom sub-paragraph (5) applies, in the case of supply staff who care for, train, supervise or are in charge of children for whom accommodation is provided, a check is made by the proprietor that the relevant parts of Standard 38 of the National Minimum Standards for Boarding Schools or, where applicable, Standard 27 of the National Minimum Standards for Residential Special Schools are complied with.

4B.—(1) This paragraph applies to the proprietor of an independent school.

(2) The suitability of any proprietor who is an individual or the Chair of any body of persons named as the proprietor of the school in the register or in an application to enter a school in the register, meets the standard if—

- (a) an enhanced criminal records check, which is countersigned by the Secretary of State, is made in respect of each such person and the enhanced criminal record certificate which is the subject of the application is obtained before that person commences acting as a proprietor, in the case of an individual proprietor, or that person's appointment in the case of a Chair;
- (b) the identity of any such person is checked and a check is made of his right to work in the United Kingdom; and
- (c) in the case of any such person for whom, by reason of his living or having lived outside the United Kingdom, obtaining such an enhanced criminal record certificate is not sufficient to establish his suitability to work in a school, such further checks as the Secretary of State considers appropriate are made.

(3) The checks referred to in sub-paragraph (2) shall be completed by the Secretary of State, in the case of an individual proprietor, before that individual commences acting as such, or in the case of a Chair, before the person takes up his appointment as a Chair, for the standard to be met.

(4) The suitability of any member of a body of persons named as the proprietor meets the standard if—

- (a) an enhanced criminal record check in respect of each such person is made and the enhanced criminal record certificate which is the subject of the application is obtained before his appointment;
- (b) the identity of any such person is checked and a check is made of his right to work in the United Kingdom; and
- (c) in the case of any such person for whom, by reason of his living or having lived outside the United Kingdom, obtaining such an enhanced criminal record certificate is not sufficient to establish his suitability to work in a school, such further checks as the Chair considers appropriate are made, having regard to any guidance issued by the Secretary of State.

(5) The Chair of any such body of persons named as the proprietor is responsible for ensuring that the checks referred to in sub-paragraph (3) are completed and that a copy of the enhanced criminal records certificate is obtained before appointment.

(6) The suitability of any person mentioned in sub-paragraph (2) or (4) of this paragraph meets the standard if no such person carries out work, or intends to carry out work, at the school in contravention of any direction made under section 142 of the 2002 Act or any disqualification, prohibition or restriction which takes effect as if contained in such a direction.

(7) In this regulation, a reference to a Chair of a body of persons includes a reference to a similar officer.

4C.—(1) The proprietor shall keep a register which meets the following requirements.

(2) In relation to each member of staff appointed on or after 1st May 2007, the register shall show whether—

- (a) his identity was checked;
- (b) a check was made to establish whether he is subject to any direction made under section 142 of the Education Act 2002 or any disqualification, prohibition or restriction which takes effect as if contained in such a direction;
- (c) checks were undertaken to ensure, where appropriate, that he had the relevant qualifications;
- (d) an enhanced criminal record certificate was obtained in respect of him;
- (e) checks were made pursuant to paragraph 4(2)(c);
- (f) a check of his right to work in the United Kingdom was made; and
- (g) checks were made pursuant to paragraph 4(2)(e),

and the register shall include the date on which each such check was completed or the certificate obtained.

(3) In relation to each member of staff in post on 1st August 2007 who was appointed at any time before 1st May 2007, the register shall show whether each check referred to in sub-paragraph (2) of this paragraph was made and whether an enhanced criminal record certificate was obtained, together with the date on which any check was completed or certificate obtained.

(4) In relation to supply staff, the register shall show whether—

- (a) written notification has been received from the employment business that—
 - (i) it has made checks corresponding to those which sub-paragraphs (2)(a) to (c), (e) and (f) of this paragraph requires to be recorded in relation to staff at a school;
 - (ii) it or another employment business has made an enhanced criminal record check; and

(iii) it has obtained an enhanced criminal record certificate in response to an enhanced criminal record check made by that or another employment business;

together with the date the written notification that each such check was made, or certificate obtained, was received; and

(b) a check has been made in accordance with paragraph 4A(8) together with the date the check was completed.

(5) Where written notification has been received from the employment business in accordance with a contract or other arrangements made pursuant to paragraph 4A(7) that it has obtained an enhanced criminal record certificate which disclosed any matter or information, or that information was provided to it in accordance with section 113B(6) of the Police Act 1997, the register shall also show whether the employment business supplied a copy of the certificate to the school.

(6) In relation to each member of a body of persons named as the proprietor appointed on or after 1st May 2007, the register shall show whether—

(a) a check was made of his identity and his right to work in the United Kingdom; and

(b) checks were made pursuant to paragraphs 4B(4)(a) and (c),

and the register shall include the date on which each such check was completed and the certificate obtained.

(7) In relation to each member of a body of persons named as the proprietor in post on 1st August 2007 who was appointed at any time before 1st May 2007, the register shall show whether each check referred to in sub-paragraph (6) was made and whether an enhanced criminal record certificate was obtained, together with the date on which any check was completed or certificate obtained.

(8) It is immaterial for the purposes of sub-paragraphs (2), (3), (4), (6) and (7) whether the check was made or certificate obtained pursuant to a legal obligation.

(9) The register required to be kept pursuant to this paragraph may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.”.

Savings

6.—(1) Subject to paragraphs (2) and (3), the amendments made by these Regulations do not affect the suitability of any staff, supply staff or proprietor appointed before 1st May 2007, and accordingly paragraph 4 of the Schedule to the principal Regulations, as it had effect immediately before these Regulations came into force, continues to have effect in relation to the persons to whom it applied before that date.

(2) Notwithstanding paragraph (1), the provisions of paragraphs 4C(3), (4), (5) and (7) of the Schedule to the principal Regulations, as amended by these regulations, have effect in relation to any staff, supply staff or proprietor appointed before 1st May 2007.

(3) In the case of any staff, supply staff or proprietor appointed before 1st May 2007, nothing in paragraph (1) shall prevent the amendments made by these Regulations applying in relation to those persons when taking up subsequent appointments.

28th March 2007

Andrew Adonis
Parliamentary Under Secretary of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the Education (Independent School Standards) (England) Regulations 2003 (the “principal Regulations”). Both these Regulations and the principal Regulations apply only in relation to England.

Regulation 3 amends the principal regulations with the effect that the provisions of the Schedule to the principal regulations concerning the suitability of staff, supply staff and proprietors apply to all independent schools, including Academies, city technology colleges and city colleges for the technology of the arts.

Regulation 4 amends a number of definitions in the principal Regulations.

Regulation 5 substitutes new provisions relating to the suitability of staff and proprietors for the existing paragraph 4 of the Schedule to the principal regulations. The requirements substituted by regulation 5 of these regulations are independent school standards for the purposes of section 157 of the Education Act 2002. The paragraph numbers below are references to the paragraphs contained in the Schedule to the principal Regulations as amended by these Regulations.

A requirement is introduced that all members of staff (separate provision is made for proprietors and supply staff) must be subject to checks on any bar from working with children and young persons (4(2)(d)), and on their identity, medical fitness, right to work in the United Kingdom, previous employment history, character references and qualifications and professional references where appropriate (4(2)(a)). It is also a requirement that, subject to exceptions, such a member of staff, prior to or as soon as practicable after, his appointment be subject to an enhanced Criminal Records Bureau (“CRB”) check made under the Police Act 1997 (4(2)(b) and 4(4)). Paragraph 4(2)(c) provides that any person who has lived outside the United Kingdom must be subject to further checks if a CRB check is insufficient to establish suitability to work in a school.

A person supplied by an employment business (supply staff) cannot work at a school until the employment business has confirmed that checks have been carried out, and schools are required in their arrangements with agencies to place them under an obligation to provide this information, paragraph 4A.

The Secretary of State carries out an identity, right-to-work and enhanced CRB check on a person intended to become a proprietor, paragraph 4B, before an individual takes up the post. Any Chair of a body of persons named as proprietor who has been checked by the Secretary of State is required to carry out checks on other members of the body of persons named as proprietor.

Independent schools are required to keep a register of the checks which they have made in respect of their own staff and members of bodies of persons named as proprietors, and, in the case of supply staff, of the information about checks provided by the supply agency and carried out by the proprietor, paragraph 4C.

Regulation 6(1) provides that the amendments made to the principal Regulations by these Regulations shall not take effect in relation to staff, supply staff or proprietors appointed before these Regulations come into force on 1st May 2007. The suitability of such persons will meet the standard if the provisions of paragraph 4 of the Schedule to the principal Regulations, as in force immediately prior to the coming into force of these Regulations, are satisfied. Regulation 6(2) provides that the requirement to keep a register of any checks carried out in respect of persons appointed before 1st May 2007 applies notwithstanding the saving referred to. Regulation 6(3) provides that where staff, supply staff or a proprietor appointed before 1st May 2007 leaves the post on or after the date on which these Regulations come into force, the amendments made by these Regulations will apply to such a person if he is appointed to a post covered by these Regulations at a later date.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Stephen Erskine, Department for Education and Skills, 2nd Floor, Area C, Mowden Hall, Staindrop Road, Darlington, DL3 9BG and is

annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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